

## **UPDATED: Former Socorro Electric Cooperative Managers Sue Co-op**

Journal Staff

### **They also have grievances against the co-op pending with the Equal Employment Opportunity Commission**

SOCORRO — Two managers fired from their positions at Socorro Electric Cooperative in August have filed separate lawsuits against their former employer claiming lost wages totaling more than \$88,000 between them.

Polo Pineda Jr., who served as general manager since 2003, and Kathy Torres, the accounting manager who had worked for the company for 22 years, were placed on administrative leave without pay Aug. 13 amid an investigation into financial irregularities. Socorro Electric's board of trustees voted to terminate them both at a special meeting held Aug. 25.

According to the complaints, the managers were due final payment of wages and compensation within five days of termination, as per state law, meaning they should have received disbursements by Aug. 30.

In Pineda's case, he received only partial payment on Sept. 3, according to the complaint filed in Second Judicial District Court in Albuquerque on Oct. 18. The document indicates Pineda is now a resident of Albuquerque.

Torres didn't receive her final payment until Sept. 4, according to her complaint filed in the Seventh Judicial District Court in Socorro on Oct. 20.

The court filings are both titled "Verified Complaint for Violations of New Mexico Wage and Hour Law" and indicate that Pineda and Torres are entitled to an additional 60 days wages pursuant to state law.

Pineda's complaint states that he is due \$19,004.27 in wages and an additional \$58,646.44 for unused sick time, for a total of \$77,650.71. It also asks Judge Beatrice Brickhouse to award Pineda interest and court costs in the judgment.

Torres' claim seeks \$10,947.73 in wages, interest and court costs. Judge Kevin R. Sweazea is scheduled to hear the case.

Both Pineda and Torres are represented by J. Edward Hollington of Albuquerque, the same attorney who won a settlement against the co-op for wrongful termination of Lupe Vega in 2005. Vega was fired as general manager in May 2003.

Court documents indicate that Lorna M. Wiggins of Albuquerque is the attorney representing the co-op in the case against Torres.

Pineda's case file includes a letter dated Sept. 8 from Hollington requesting insurance continuation forms that's addressed to co-op attorney Dennis Francish and Paul Bustamante, the co-op's president.

Bustamante told El Defensor Chieftain in August that the managers were let go for abusing a policy that allowed them to borrow money from their 401K pension plans. Between the two of them, loans totaling roughly \$35,000 were not paid back in a timely manner, Bustamante said.

## **EEOC Complaints**

Pineda and Torres have also filed grievances against the co-op with the Equal Employment Opportunity Commission.

Torres' charge of sex and racial discrimination and retaliation was issued before she was fired.

On July 7, Torres filed a complaint with the EEOC charging that the co-op's board of trustees failed to act on her allegations that she had been subject to sexual harassment and racial discrimination by trustee Charlie Wagner.

"He has done such things as accuse me of fraud, which I believe is racially motivated as he has made racial comments about Hispanics," her complaint reads. "He has made comments in board meetings to other members that they are 'hiding behind (my) skirt.'"

The complaint goes on to say that she believed that Wagner would eventually have her fired in retaliation for her complaints against him.

Pineda filed his claim of retaliation with the EEOC on Oct. 7. It indicates that he witnessed Wagner making racist remarks toward Torres and told the board chairman and other trustees about it.

"I believe my employment was terminated and Respondents have continued to publicly disparage me with the intent of causing damage because I engaged in protected activity in speaking out, objecting to and confronting a certain Trustee of SEC because of his racist statements and conduct toward Ms. Kathy Torres and other Hispanic females," Pineda's complaint states. "I have been damaged by the loss of my income, emotional distress, and other compensatory damages."

Wagner, an outspoken critic of the co-op board and management, has maintained all along that the allegations against him are unfounded. He said the charges against him are part of a smear campaign in retaliation for his leading a movement to reform the co-op.

In May, one month after nearly a dozen reform resolutions were overwhelmingly passed by member-owners at the annual meeting, the board of trustees took action to censure Wagner for remarks he allegedly made about Torres and other co-op officials.

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Friday, 03 September 2010 12:15

SOCORRO — Socorro Electric Cooperative trustee Charlie Wagner believes there's been a cover-up of the financial irregularities that resulted in the firing of two managers. And he wants a vote to be taken to recall Paul Bustamante, the co-op's president.

Wagner claims Bustamante was aware of the problem when the accounting firm of Bolinger, Segars, Gilbert and Moss completed the initial audit back in May. But it wasn't until more than two months later — after a co-op employee sent an anonymous letter alleging the improprieties — that anything was done about it.

At that time, Bustamante appointed a committee made up of trustees to investigate the matter. At an Aug. 13 special meeting the employees, general manager Polo Pineda Jr. and accountant-office manager Kathy Torres, were placed on administrative leave without pay. The board ultimately terminated the managers at its regular meeting on Aug. 25.

"If it had not been for the whistle blowers, Bustamante may have continued to conceal the auditor's revelations indefinitely," Wagner claimed in an e-mail he sent on Monday (Aug. 30) to Bustamante and several other parties, including the auditors, the co-op attorney and a representative of the Equal Employment Opportunity Commission.

Bustamante responded to the e-mail the same day, copying El Defensor Chieftain in his reply. In it, he denied there was a cover-up and provided an explanation for what transpired between now and the time he first learned of the financial irregularities.

In a phone interview Tuesday (Aug. 31), Bustamante reiterated much of what he wrote in the e-mail. He admitted that he told just two other trustees — Luis Aguiar and Milton Ulibarri — in the days after the auditors had completed the first draft of the audit, which turned up some irregularities.

"At that time, the numbers were off and hadn't been reconciled," he said. "It was something that was turned up the last day of the audit."

Bustamante said he intended to inform the entire board at the trustees' June meeting, but that meeting was abruptly canceled when member-owners in attendance refused to leave the boardroom for executive session. He said the board would have heard the audit report from Bolinger, Segars, Gilbert and Moss in July, but because of the delay the auditors didn't give their report to the board until last week.

Bustamante also said the matter was being addressed before then. He had talked to Pineda about the approximately \$35,000 Pineda and Torres had borrowed from their pension plans in 2009, but had not paid back.

"That money was later collected," Bustamante said. "There are canceled checks."

Bustamante denied he tried to hide anything.

"There was no cover-up," he said. "That's Charlie's strategy. He's thinking there's a conspiracy and that we coerced Kathy to file a claim against him with the EEOC."

Torres filed a claim against the entire board on July 7 for failing to address her complaint that she had been sexually and racially discriminated against by Wagner.

As for Wagner calling for him to be replaced as president, Bustamante said, "If there's somebody else who can do the job and is willing to take on the responsibilities, I'll respect their wishes. I'm just trying to do what's best for the co-op. It wouldn't hurt my feelings."

Wagner said on Tuesday (Aug. 31) that he sent the e-mail on Monday, and another one in response to Bustamante's reply, to spell out the facts.

"My answer is intended to set the record straight and if he's not going to do the job as president, then he's putting himself in the same boat as the people who were terminated," Wagner said.

Wagner said Bustamante's excuse about the June meeting being canceled is irrelevant, because Bustamante failed to inform the board at its May meeting that a possible crime had been committed. And instead of informing the board of the irregularities, Wagner said Bustamante went first to the people who were "suspects."

Wagner has been pushing for a forensic audit to be done in wake of the financial irregularities that had been

discovered and the auditor's report that revealed numerous material weaknesses.

At last week's board of trustees meeting, and the following day at a meeting to hear the auditor's report, Wagner attempted to get the board to approve the hiring of BKD CPAs and Advisors. The firm, he said, was recommended to him by high-level officials with the National Rural Electric Cooperative Association. Wagner said then that BKD could have a forensic audit done within a week.

The board was hesitant to hire the firm right away. After tabling the matter on Aug. 25, the board chose on Aug. 26 after hearing the auditor's report to seek other bids and schedule another special meeting to decide what to do next.

Bustamante said the co-op has sought other bids since then. He said Bolinger, Segars, Gilbert and Moss had declined the invitation, since it conducted the initial audit. One other firm had expressed interest in submitting a bid, he said, but nothing had been received by noon Tuesday.

Bustamante said a special meeting to decide on a forensic audit would likely be held either Tuesday or Wednesday of next week.

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Monday, 23 August 2010 12:59

SOCORRO — The investigation into allegations of financial irregularities at Socorro Electric Cooperative is ongoing and a few new details have emerged recently.

Co-op President Paul Bustamante told El Defensor Chieftain on Friday (Aug. 20) that the irregularities in question involve money being borrowed from employee pension plans.

While the investigation is being conducted, two co-op managers — general manager Polo Pineda Jr. and office manager-accountant Kathy Torres — have been placed on administrative leave without pay.

Bustamante said the co-op allows employees to borrow money from their 401K plans.

"It's a practice that has been done in the past; it's not anything new," he said. "Other co-ops do it. In this case they borrowed, but may not have had the money (to pay it back) so it wasn't paid in a reasonable amount of time."

Bustamante said employees are required to pay back the fund within 30-35 days. The total amount that was borrowed between the two of them was in the neighborhood of \$35,000, he said.

The co-op president said the money was borrowed in April or May 2009 — soon after the end of the co-op's fiscal year, which ends March 31 each year. The money may not have been paid back until July of this year.

Whether it had or not is one of the things being investigated.

"We've seen the reconciliation sheet that says that it was paid. But, of course, there needs to be a receipt," he said.

Bustamante said receipts may exist, but he hasn't seen them and many of the financial documents related to the case have been secured.

"We may have to have another forensic audit done. That's something I'll bring up at Wednesday's meeting," he said.

The co-op's board of trustees' regular meeting is scheduled for Wednesday (Aug. 25) at 5:30 p.m. A special meeting to hear the auditor's report for fiscal year ending 2010 is set for the same time the following day.

Excerpts from Socorro Electric's audits for fiscal years ending in 2008 and 2009, conducted by the accounting firm of Bolinger, Segars, Gilbert and Moss of Lubbock, Texas, are posted on the co-op's website.

Bustamante said no discrepancies were revealed in the audit for fiscal year ending 2009, but the money borrowed by Pineda and Torres would not have turned up on that audit.

Bustamante appointed a committee made up of five members of the board of trustees to investigate the allegations after an anonymous letter was mailed to members of the board last month. Committee members have been investigating the allegations since then, and have met several times to discuss their findings and how to proceed during the process.

Bustamante said co-op attorney Dennis Francish has been directed to contact law enforcement agencies.

Francish said in an Aug. 20 phone interview that he had written a letter to District Attorney Clint Welborn, contacted New Mexico State Police and delivered documents to the FBI.

"Whether they want to do anything with it or not, I don't know," Francish said.

Bustamante said that on Thursday (Aug. 19) a field representative with the Rural Utility Service — a division of the United States Department of Agriculture from which electric utilities obtain loans — was in Socorro and met with the investigative team. The representative left a 15-page checklist of items to be looked into, he said.

Bustamante said the committee was still going through records and he wasn't sure where the investigation would lead next.

"This is all new to us," he said. "We have to gather the information and at that point decide the next step."

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Wednesday, 18 August 2010 12:07

SOCORRO — Socorro Electric Cooperative's general manager and office manager-accountant have been placed on administrative leave without pay while an investigation into "financial irregularities" is being conducted.

Polo Pineda Jr. has served as general manager since 2003. Kathy Torres has been with the co-op in an administrative capacity for 22 years.

The action came following a two-hour special meeting of the board of trustees addressing personnel matters on Friday night (Aug. 13).

A statement issued by the trustees on that date read: "A committee was appointed by the President of Socorro Electric Cooperative to investigate certain financial irregularities reported under the whistle blower policy of the cooperative.

"Two SEC employees have been placed on unpaid leave for an indefinite period while the investigation proceeds."

Co-op President Paul Bustamante appointed a committee to look into the matter three weeks ago, after an anonymous letter written on company stationery and mailed using the co-op's postage meter was sent to the individual trustees.

Pineda did not return phone calls to El Defensor Chieftain on Monday and Tuesday. Torres could not be reached for comment.

According to IRS 990 forms, Pineda earned a salary of \$102,151 in 2008 and another \$35,990 in estimated compensation from the organization and related organizations.

Torres' salary could not be verified by Chieftain press time on Tuesday.

Trustees Donald Wolberg and Luis Aguilar serve as chairman and co-chairman, respectively, for the inquiry committee. They said in an interview on Monday (Aug. 16) that they've probably spent 120 hours investigating the allegations, examining records and conducting interviews with employees.

"The purpose of the committee is to continue to work to understand what happened — and what may have happened — and to make sure it doesn't happen again," Wolberg said, and added that he couldn't be too specific about what kind of irregularities were being investigated. "We don't want to violate anyone's rights, or impair the integrity of the process, because we're not done. We're doing everything we possibly can to ensure we take a reasonable, rational and lawful approach."

"True or not, it's the responsibility of the committee to make sure everything is done correctly and to determine if (the allegations) are true or not," added Aguilar.

The committee is also made up of trustees Leroy Anaya, Leo Cordova and Prescilla Mauldin. As president, Bustamante sits on the committee ex-officio.

Over the weekend, security guards were stationed outside the co-op office on East Manzanares Street.

"The building was secured to preserve the integrity of records and documents and to make sure they're being taken care of," Wolberg said.

Wolberg said the co-op wanted to be as forthcoming it could about the matter to suppress the rumor and innuendo that was going around. He wanted to make sure member-owners and employees knew that the matter was being addressed and that there would be no disruption in co-op operations.

"The board feels that members are entitled to reporting and candor surrounding this matter and that's the responsibility of the committee," he said. "The members have to be taken care of first."

In the meantime, co-op management has undergone a shift. Operations Manager Richard Lopez moves over to fill the role as general manager and Line Superintendent David Montoya fills Lopez's position.

Administrative Assistant-Payroll Clerk Eileen Latasa is now doing the duties of office manager, while Senior Billing Clerk Frances Herron has taken over accounting. Supervisor of Engineering Services Sophie Chavez steps in to fill Montoya's role.

Wolberg pointed out that all of them have been with the co-op for many years.

“We have great confidence in their abilities. Our main concern is for a seamless transition,” he said.

Wolberg said the committee is sensitive to the concerns of the 36 or so employees.

“The priority is members have to be taken care of first, then the employees to make sure they are secure, safe and appreciated,” he said, adding that he appreciated the cooperation and frankness exhibited by employees during the investigation.

The management shake up is a new gyration in what are turbulent times for the Socorro co-op.

In April, member-owners passed a bevy of new bylaws aimed at reforming the way the co-op goes about its business. The board of trustees later decided to challenge in district court three of the bylaws that address transparency of governance. In order to do so, the co-op filed a lawsuit against “all unnamed members of the Socorro Electric Cooperative Inc.,” which includes approximately 13,000 member-owners.

The matter is still pending.

Last month, Kathy Torres filed papers with the Equal Employment Opportunity Commission claiming sexual and racial discrimination against trustee Charlie Wagner, a leader in the reform movement.

Amongst other things, she claimed that Wagner accused her of committing fraud.

Trustee Aguilar said an air of anxiety and discomfort has lingered in the co-op offices as a result of all the turmoil. He’s hopeful that will soon be dispelled.

“I truly believe this is an opportunity for the Socorro Electric Cooperative to continue to move forward and improve,” he said.

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## **Suggested Reading:**

- [UPDATED: Socorro Electric Cooperative Managers Borrowed From Employee Pension Plans](#)
  - [Socorro Electric Cooperative Investigates ‘Financial Irregularities’](#)
  - [UPDATED: Trustee Alleges Cover-Up of Financial Irregularities at Socorro Electric Co-op](#)
  - [Socorro Electric Co-op Overcharged Member-Owners Nearly \\$1.8M](#)
  - [Las Vegas, N.M., Official New GM of Mora-San Miguel Electric Cooperative](#)
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